

## PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298



October 15, 2002

**VIA ELECTRONIC FILING**

Magalie Roman Salas, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW - Portals II, TW-A325  
Washington, DC 20554

**Re:** *Ex parte* Letter from the California Public Utilities Commission in  
CC Docket No. 99-200, Number Resource Optimization

Dear Ms. Salas:

Pursuant to Rule 1.1206(b)(1) of the Federal Communications Commission rules, the California Public Utilities Commission (CPUC) submits the attached letter for filing in the above-captioned docket with regard to the CPUC's petition for authority to implement specialized overlays.

If you have any questions, please contact me at 415.703.1319. Thank you for your time and attention to this matter.

Sincerely,

/ s / Helen M. Mickiewicz

Helen M. Mickiewicz  
Deputy General Counsel

October 8, 2002

Mr. William Maher, Chief  
Wireline Competition Bureau  
Mr. Thomas Sugrue, Chief  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street SW  
Washington, D.C. 20554

Re: **CTIA Letter Dated October 2, 2002**

Dear Messrs. Maher and Sugrue:

On September 27, 2002, the California Public Utilities Commission (CPUC) filed with the FCC a petition seeking authority to implement two specialized overlays in southern California. The FCC has not yet issued a public notice seeking comment on the petition. Yet, on October 2, 2002, the Cellular Telecommunications & Internet Association (CTIA) submitted to the FCC an ex parte letter challenging the CPUC's petition. We will not respond here to CTIA's claims pertaining to the September 27<sup>th</sup> petition; the appropriate venue for addressing issues raised in the petition is the comment cycle. The purpose of this letter, however, is to respond to CTIA's demand for the FCC to reverse a specific CPUC action regarding rationing of NXX codes, authority over which the CPUC exercises pursuant to delegation from the FCC.<sup>1</sup> CTIA's characterization of the facts supporting its demand for FCC action is at best, incomplete, and at worst, misleading.

In its letter, CTIA asserts the following:

[T]he CPUC has directed the Pooling Administrator and the North American Numbering Plan Administrator to bar wireless carriers from participating in the October lottery. [Footnote omitted.] Wireless carriers

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<sup>1</sup> See Letter to Helen M. Mickiewicz, from Yog Varma, Deputy Chief, Common Carrier Bureau, dated December 1, 1998. See also *Order*, FCC 99-248 in CC Docket No. 96-98/ NSD File No. L-98-136, Released Sept. 15, 1999, ¶ 38.

are barred from participating in the October lottery because the CPUC has limited participation to only “pooling capable” carriers, and wireless carriers will not be able to support pooling until after the October deadlines.<sup>[2]</sup> The consequence of this action is to discriminate against all non-pooling capable carriers. (CTIA October 2<sup>nd</sup> letter, p. 2.)

It is correct that the CPUC sent a letter to carriers informing them that the September 2002 lottery would be the last lottery in which non-pooling capable carriers could request whole NXX codes. The CPUC sent that letter to carriers on June 4, 2002. The October 1<sup>st</sup> letter to which CTIA refers addressed a different subject, although it did reference the June 4<sup>th</sup> letter and the cut-off for carriers to receive whole NXX codes.<sup>3</sup> In the October 1<sup>st</sup> letter, the CPUC informed carriers that, pursuant to its delegated authority over NXX code rationing in California, the CPUC would be reducing the code allocation for all twenty-one NPAs in pooling. The CPUC took this step because all carriers, except paging companies, would be in pooling beginning November 24, 2002. Because carriers should be able to meet most of their numbering needs through pooling, the need to continue issuing whole NXX codes will be greatly reduced. At the same time, the CPUC is mindful of the need to maintain a mechanism for carriers to receive whole NXX codes in response to a specific customer request or to meet some other emergency need. In addition, since paging companies are exempt from pooling, they must have a means to obtain whole NXX codes. The October 1<sup>st</sup> letter states that the CPUC will revisit the need for continuing the lottery in six months.

Based on the tenor and specific claims in its letter, it appears that CTIA is not complaining about the code reduction addressed in the CPUC’s October 1<sup>st</sup> letter. Rather, CTIA objects to the CPUC’s determination that the last lottery in which non-pooling capable carriers could receive whole NXX codes was the September lottery. CTIA’s complaint to the FCC is curious for several reasons. First, *not one carrier* has complained informally or formally to the CPUC about the June 4<sup>th</sup> letter. Nor has CTIA complained to the CPUC about the determination to stop allocation of whole NXX codes with the September lottery. As has happened on so many prior occasions, the national lobbying arm of the industry is raising to the FCC a matter that appears to be completely uncontroversial in California.

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<sup>2</sup> It is not clear to what “October deadlines” CTIA is referring, but perhaps the reference is to the deadline for carriers to submit NXX code applications for the October lottery.

<sup>3</sup> Both the June 4<sup>th</sup> and October 1<sup>st</sup> letters are attached.

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Further, CTIA assumes in its letter that the purpose of the CPUC's action was to discriminate against wireless carriers. Indeed, the CPUC has issued a similar letter prior to the start of pooling in every NPA in California where pooling has been implemented, and noted that process in the June 4<sup>th</sup> letter.<sup>4</sup> In each instance, the CPUC informed carriers of the date for the last lottery in which they could obtain whole NXX codes. The reason for this is simple. Code activation requires 66 days. Thus, if a carrier were to obtain a whole NXX code in the October lottery in the 415 area code, for example, that code would not be activated until December 13, 2002. By contrast, wireless carriers may submit requests for 1,000-blocks in 415 in early November, and can receive those blocks at the beginning of December. In other words, carriers can obtain activated numbers *faster* by waiting for the start of pooling than by taking one or more whole NXX codes in the October lottery.

The carriers in California appear to have understood the logic of the CPUC's action, which may explain the absence of complaints. The CPUC continues to address carrier requests for codes on an emergency basis outside the lottery process, and on the basis of safety-valve requests. Given that all carriers, wireline *and* wireless, have been subject to a cut-off for obtaining whole NXX codes before pooling begins in every California NPA, CTIA's claim of discrimination seems inapposite. Had the CPUC failed to establish a cut-off date for wireless carriers to receive whole NXX codes prior to the start of wireless pooling, the CPUC would have been discriminating in favor of wireless carriers, a policy to which CTIA, of course, never objects, and in fact routinely advocates, as in this instance.

Finally, the CPUC objects to CTIA's recommendation that the FCC "seek comment on alternate methods of achieving numbering relief", presumably in the geographic areas the petition addresses. The form of area code "relief" to be implemented is up to the CPUC to determine. The CPUC has long exercised delegated authority from the FCC to plan and implement area code changes. Pursuant to FCC orders, states may employ an area code split, an overlay, or a boundary realignment. All of those choices are within the

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<sup>4</sup> "Consistent with previous California Number Pool implementations, carriers will be able to continue to participate in the 760, 559, and 530 NXX Code Lotteries only if they are ineligible to participate in the number pools".

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purview of the CPUC to adopt. The only request at issue in the petition is a specialized overlay. The CPUC has explained in the petition the authority requested; if the CPUC were seeking authority to implement an all-services overlay immediately, rather than via a phased approach, the petition would so state.

Thank you for your attention to this matter. Please feel free to give me a call to discuss this letter or the petition. You may reach me at 415.703.1319.

Sincerely,

Helen M. Mickiewicz  
Deputy General Counsel

HMM:mfd

cc: Eric Einhorn  
Cheryl Callahan  
Sanford Williams  
Diane Griffin Harmon  
David Furth  
Hon. Loretta Lynch  
Michael Altschul